

# Enforcement

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*The SEC's enforcement program seeks to promote the public interest by protecting investors and preserving the integrity and efficiency of the securities markets.*

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## What We Did

- Obtained orders in SEC judicial and administrative proceedings requiring securities law violators to disgorge illegal profits of approximately \$445 million. Civil penalties ordered in SEC proceedings totaled more than \$43 million.

<b>Enforcement Actions Initiated</b>					
	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>
Civil Injunctive Actions	180	189	214	198	223
Administrative Proceedings	239	285	248	298	244
Contempt Proceedings	32	14	15	29	36
Reports of Investigation	2	1	0	0	0
Total	453	489	477	525	503

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## Significant Enforcement Actions

Most of the SEC's enforcement actions were resolved by settlement with the defendants or respondents, who generally consented to the entry of judicial or administrative orders without admitting or denying the allegations against them. The following is a sampling of the year's significant actions.

### Financial Disclosure Cases

- *SEC v. Jay Gilbertson, et al.*<sup>1</sup> On September 28, 2000, the Commission filed charges against three individuals arising from its investigation into financial reporting fraud at McKesson HBOC, a Fortune 100 company formed by a merger of McKesson Corporation and HBO & Company. By "cooking the books" from 1997 through March 1999, the defendants enabled HBO & Company to report falsely in press releases and in periodic reports filed with the Commission that the company was having an unbroken run of financial success and that HBO & Company had continually exceeded analysts' quarterly earnings expectations. One of the defendants, the former vice president of enterprise sales at HBO & Company, consented to the entry of an injunction and agreed to disgorge \$361,528.80 in ill-gotten gains (including interest) and to pay a civil penalty of \$50,000; this defendant also agreed to be barred for five years from serving as an officer or director of a public company. This case was pending

as to the remaining defendants at the end of the fiscal year.

- *SEC v. Cosmo Corigliano, et al.*<sup>2</sup> The Commission filed a civil action, which was pending at the end of the fiscal year, against four former officers or managers of CUC International Inc. The Commission also instituted and simultaneously settled administrative proceedings against Cendant Corporation (which was created through a merger of CUC and HFS Incorporated), and three former managers of CUC. The administrative proceedings and litigation resulted from the Commission's investigation of a long-running financial fraud that began at CUC in the 1980s and continued until its discovery and disclosure by Cendant in April 1998. Upon disclosure of the fraud, the price of Cendant common stock plummeted, causing billions of dollars in losses for investors.
- *In the Matter of E.ON AG.*<sup>3</sup> The Commission brought and settled civil administrative fraud charges against E.ON AG, Germany's third largest industrial holding company (formerly known as Veba AG), for issuing materially false denials over the course of a month concerning merger negotiations with Viag AG, another German company. Veba denied press reports that it was engaged in merger negotiations with Viag when, in reality, the two companies had executed a confidentiality agreement, retained investment bankers and legal advisors,

exchanged financial forecasts, and engaged in high-level talks concerning proposed deal structures, valuation methods, corporate governance and other merger issues. E.ON consented to the entry of a cease and desist order.

- On September 27, 2000, the Commission announced the filing of 11 enforcement actions for fraud and related financial accounting and reporting abuses by six different public companies. These actions allege a variety of accounting abuses that were designed to fraudulently mislead the investing public about the state of the issuers' financial health. Among those named in the actions are former officers of Sirena Apparel Group, Inc. and Craig Consumer Electronics, Inc., two Southern California-based public companies. The SEC also brought securities fraud charges involving four other public companies located in California, Nevada, and Washington. These actions are part of a coordinated effort by the SEC and the U.S. Attorney for the Central District of California to highlight incidents of financial fraud occurring on the west coast.
- *SEC v. ABS Industries, Inc. et al.*<sup>4</sup> On October 27, 1999, the Commission filed a complaint in federal district court against ABS Industries, William McCarthy, Theodore Ursu, John McHale, and David Bush. The complaint alleges that the defendants engaged in a fraudulent scheme to recognize millions of dollars of revenue prematurely by improperly recording purported "bill and hold" sales at

ABS. The alleged purpose of this activity was to meet sales projections established by McCarthy. As a result, ABS overstated its accounts receivables, sales, pre-tax income, net income and earnings per share in its financial statements for fiscal year 1994 and for the first three quarters of 1995. This case was pending at the end of the fiscal year.

## **Offering Cases**

### *Internet Cases*

- On September 6, 2000, the Commission announced 15 enforcement actions against 33 companies and individuals who used the Internet to defraud investors by engaging in pump-and-dump stock manipulations. The perpetrators of these market manipulations “pumped” up the total market capitalization of those stocks involved by more than \$1.7 billion. The actions involve the stocks of more than 70 microcap companies and illegal profits of more than \$10 million. The cases include 11 civil actions filed in U.S. District Courts throughout the country and four related administrative proceedings, and involve individuals and small entities that spread false information through electronic newsletters, websites, e-mail messages, and through posts on Internet message boards. These actions were part of the fourth nationwide Internet fraud sweep conducted by the Commission, following earlier sweeps in 1998 and 1999.

- *SEC v. Yun Soo Oh Park a/k/a Tokyo Joe, et al.*<sup>5</sup> The Commission's action against Yun Soo Oh Park a/k/a Tokyo Joe, and Tokyo Joe's Societe Anonyme Corp., a corporation under Park's control, alleged a scheme to defraud members of his Internet stock recommendation service through his undisclosed trading ahead of the stocks that he recommended over the Internet, the posting of false performance results, and his recommendation of an issuer's stock without disclosing that he had indirectly received compensation from the issuer. This case was pending at the end of the fiscal year.

### *Microcap Cases*

- On June 14, 2000, the Commission filed five actions against a total of 63 individuals and entities as part of a continuing campaign to clean up fraud in the "microcap" market for low-priced securities. The actions alleged a wide array of illegal conduct including "pump and dump" manipulation schemes, private placement fraud and investment adviser pay-to-play violations. All told, those charged reaped millions of dollars in illicit profits. In simultaneous criminal prosecutions, the U.S. Attorney for the Southern District of New York and the FBI announced indictments and criminal complaints naming more than 100 defendants in securities fraud schemes; the indictments name 11 members and associates of five different organized crime families in connection with several securities fraud scams. These

individuals are charged with participating in numerous manipulations of microcap stocks, extortion, money laundering, bribery and kickbacks, witness tampering, and murder solicitation.

## Insider Trading Cases

- *SEC v. James J. McDermott, Jr., et al.*<sup>6</sup> The Commission filed a civil action against James J. McDermott, Jr., the former chairman and chief executive officer of Keefe, Bruyette & Woods, Inc., an investment banking firm, and two other individuals for insider trading. The complaint alleges that McDermott provided material nonpublic information, concerning at least six merger transactions, to Kathryn B. Gannon, with whom he had a relationship. Gannon then purchased securities in relatively unknown regional banks. As a result of her illegal trading, Gannon made profits of at least \$88,135. The complaint also alleges that Gannon tipped a friend, Anthony P. Pomponio, who made profits of at least \$86,378. The U.S. Attorney for the Southern District of New York also filed criminal charges against these individuals, and, after a 12-day trial, a federal jury found McDermott and Pomponio guilty on charges of participating in an insider trading scheme with Gannon.<sup>7</sup> The Commission's civil action, which was stayed pending the outcome of the criminal trial, was pending at the end of the fiscal year.

- *SEC v. John Freeman, et al.*<sup>8</sup> The Commission filed an action alleging that 19 defendants engaged in a widespread insider trading scheme that produced over \$8 million in illegal profits. John Freeman, the source of the information, was a part-time word processor assigned by the temporary agency where he worked to two Wall Street investment banking firms, Goldman Sachs & Co., Inc. and Credit Suisse First Boston Corp. As a temporary employee at the two firms, Freeman was able to access material nonpublic information regarding numerous merger and acquisition transactions. Freeman allegedly misappropriated confidential information concerning at least 23 different transactions, and tipped at least ten others about the transactions. Some of those tipped by Freeman then tipped others about the transactions. Freeman was compensated by those he tipped in a variety of ways, including cash payments and gifts. Four principals or employees of broker dealers who traded on the inside information for their own account and/or the accounts of their clients are also charged in the complaint. This case was pending at the end of the fiscal year.

### **Municipal Securities Cases**

- On April 6, 2000, the Commission instituted and settled administrative proceedings against 10 Wall Street and regional brokerage firms for overcharging municipalities for government securities in a practice commonly known as “yield

burning.” The firms are: Dain Rauscher Incorporated; Goldman, Sachs & Co.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; PaineWebber Incorporated; Prudential Securities Incorporated; Salomon Smith Barney Inc.; Warburg Dillon Read LLC; and William R. Hough & Co. The settlements were part of a global resolution of all yield burning claims with a total of 17 brokerage firms by the SEC; NASD Regulation, Inc.; the United States Attorney for the Southern District of New York; and the Department of the Treasury. The global resolution requires the firms to pay a total of more than \$139 million in disgorgement to Treasury and municipal issuers.

- *In the Matter of BT Alex. Brown Inc.*<sup>9</sup> The Commission instituted and settled cease and desist and administrative proceedings against BT Alex. Brown, Inc., charging the firm with fraud in connection with two Pennsylvania transactions, and with yield burning in a number of other transactions. As part of a global settlement with the U.S. Attorney, the Department of the Treasury and the Commission, Alex. Brown agreed to pay disgorgement of more than \$15 million. The Commission also filed or instituted a number of related enforcement actions.

## **Broker-dealer Cases**

- On September 26, 2000, the Commission announced that it had taken action against

four broker-dealer firms as well as seven individuals associated with those firms for failing adequately to supervise individual brokers working in small, remote branch offices. Each supervisory failure involved a broker who had a disciplinary history or had been the subject of customer complaints. In addition, each of the actions charges the president of the broker-dealer with supervisory violations. Actions also were brought against four brokers associated with two of these firms for securities fraud. The brokers engaged in a variety of misconduct including unauthorized and unsuitable trading and churning investors' accounts, and theft of investor funds.

- *In the Matter of Investment Street Company, et al.; In the Matter of All-Tech Direct, Inc. f/k/a All-Tech Investment Group, Inc., et al.*<sup>10</sup> The Commission instituted administrative proceedings against two broker-dealers—All-Tech Direct, Inc. and Investment Street Company—along with nine individuals charged with violating the federal margin lending provisions by providing loans in excess of legal limits to day trading customers. The Commission also charged some of the respondents with failing to disclose required information about the terms of the loans. Investment Street, two associated persons, and Dynamic Trading of Miami, Inc, an unregistered firm providing administrative services for Investment Street, settled the charges by consenting to the entry of cease-and-desist orders, and by agreeing to pay civil money penalties; two associated

persons consented to suspensions from affiliation with any broker or dealer. The administrative proceeding against All-Tech was pending at the end of the fiscal year.

## **Investment Adviser and Investment Company Cases**

- *In the Matter of The Dreyfus Corporation, et al.*<sup>11</sup> The Commission instituted and settled administrative proceedings against the Dreyfus Corporation and Michael Schonberg, a portfolio manager for five Dreyfus funds, including the Dreyfus Aggressive Growth Fund (DAG). During DAG's first year, Schonberg's allocations of securities purchased in initial public offerings—especially “hot” IPOs—had the overall effect of favoring DAG over three other funds he managed. Dreyfus did not disclose the large impact of the IPO investments, though it was questionable whether DAG could replicate its prior performance through continuing to invest in IPOs as the fund grew larger. In fact, DAG's performance began to decline in June 1996. Notwithstanding this downturn and the fund's increased asset size, during the last quarter of 1996 Dreyfus continued to advertise DAG's excellent total return since its inception without disclosing the large impact of the IPOs on the fund's performance. The respondents consented to the entry of a cease and desist order. Schonberg also was ordered to pay a civil penalty of \$50,000 and was suspended from associating with any investment adviser for a period of nine months.

- *SEC v. Alan Brian Bond, et al.*<sup>12</sup> The Commission filed a civil action against New York pension fund manager Alan B. Bond for fraudulently receiving over \$6.9 million in kickbacks from brokerage firms in connection with his management of the pension and investment funds of such clients as the National Basketball Association, the Washington Metropolitan Transit Authority and the City University of New York. According to the complaint, Bond dictated to the brokerage firms the amount of the mark-up on each trade; the firms, in turn, kicked back 57-80% of the mark-ups to Bond. In most cases, the kickbacks were funneled through dummy corporations set up by a registered representative at the firms. This case was pending at the end of the fiscal year.